

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TERRANCE T. POWELL,

Petitioner,

v.

JOHN GAY, *et al*,

Respondents.

Case No. C07-5046RBL-KLS

REPORT AND  
RECOMMENDATION TO DENY  
APPLICATION TO PROCEED  
*IN FORMA PAUPERIS*

Noted for March 9, 2007

This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner is an inmate at the Florence Correctional Center, located at Florence, Arizona. He has filed a petition for writ of *habeas corpus* pursuant to 28 U.S.C. § 2254 and an application to proceed *in forma pauperis*. (Dkt. #1). Because petitioner appears to have sufficient funds with which to pay the \$5.00 Court filing fee, the undersigned recommends the Court deny the application.

DISCUSSION

The district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the district court has broad discretion in denying an application to proceed *in forma pauperis*. Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963), *cert. denied*, 375 U.S. 845 (1963).

Several district courts have ruled that denial of *in forma pauperis* status is not unreasonable when a prisoner is able to pay the initial expenses required to commence a lawsuit. *See Temple v. Ellerthorpe*, 586

1 F.Supp. 848 (D.R.I. 1984); Braden v. Estelle, 428 F.Supp. 595 (S.D.Tex. 1977); U.S. ex rel. Irons v.  
 2 Com. of Pa., 407 F.Supp. 746 (M.D.Pa. 1976); Shimabuku v. Britton, 357 F.Supp. 825 (D.Kan. 1973),  
 3 *aff'd*, 503 F.2d 38 (10<sup>th</sup> Cir. 1974); Ward v. Werner, 61 F.R.D. 639 (M.D.Pa. 1974).

4 By requesting the Court to proceed *in forma pauperis*, petitioner is asking the government to incur  
 5 the filing fee because he allegedly is unable to afford the costs necessary to proceed with his petition for  
 6 *habeas corpus*. The answers plaintiff provides in his application and the information contained in his  
 7 prison trust account statement show that he earns approximately \$60.00 per month working as a prisoner  
 8 employee, of which he apparently nets \$56.00 per month. While the undersigned recognizes that the funds  
 9 to which petitioner has access may not appear to be great, given the fact that a prisoner's basic needs are  
 10 provided for while incarcerated and the minimal filing fee required to proceed with this action (\$5.00), it is  
 11 not unreasonable to expect petitioner to pay that fee from his monthly earnings.

#### 12 CONCLUSION

13 Because it is reasonable to expect petitioner to incur the costs to proceed with his petition, the  
 14 undersigned recommends that the Court deny his application to proceed *in forma pauperis*. Accordingly,  
 15 the undersigned also recommends that the Court order petitioner to pay the required filing fee **within**  
 16 **thirty (30) days** of the court's order.

17 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 72(b),  
 18 the parties shall have ten (10) days from service of this Report and Recommendation to file written  
 19 objections thereto. See also Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those  
 20 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit  
 21 imposed by Fed. R. Civ. P. 72(b), the clerk is directed set this matter for consideration on **March 9, 2007**,  
 22 as noted in the caption.

23 Dated this 14th day of February, 2007.

24  
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 26   
 27 Karen L. Strombom  
 28 United States Magistrate Judge